

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ERWIN S. RAFFEL, D.D.S.	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
MONARCH DENTAL CORPORATION	:	NO. 99-4571
	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

December 15, 1999

Presently before the Court is a Defendant's Motion to Transfer Venue. For the reasons stated below, the Motion is denied.

I. FACTUAL BACKGROUND

Plaintiff Erwin S. Raffel, D.D.S. ("Plaintiff"), brought an action against Defendant Monarch Dental Corporation ("Monarch") alleging that Monarch's decision to terminate Plaintiff was motivated by age in violation of the Age Discrimination in Employment Act ("ADEA"). Monarch is a Dallas based company that manages dental practices in over 20 states. Plaintiff is a resident of Maryland and had lived there throughout his employment with Monarch. He was hired by Monarch in November, 1998 as an operational vice president and was responsible for managing certain east coast practices of Monarch, including several in the Philadelphia area. Seven months later, in June, 1999, Monarch terminated Plaintiff's

employment as part of what it claims was a corporate restructuring. Plaintiff alleges that the termination was based on his age (64). On June 29, 1999, Plaintiff filed an EEOC complaint with that agency's office in Philadelphia. The claim was forwarded by the EEOC to its Dallas office for processing. A complaint was filed by Plaintiff on September 13, 1999.

II. LEGAL STANDARD

A district court may transfer the venue of any civil action for the convenience of parties and witnesses or in the interests of justice, to any other district where it might have been brought. 28 U.S.C. § 1404(a). The purpose of this section is “to prevent the waste of ‘time, energy and money’ and ‘to protect litigants, witnesses and the public against unnecessary inconvenience and expense’” Van Dusen v. Barrack, 376 U.S. 612, 616 (1964) (*quoting* Continental Grain Co. v. Barge FBL-585, 364 U.S. 19, 26-27 (1960)). Although § 1404(a) gives a district court the discretion to decide a motion based on a individualized case by case basis consideration of convenience and fairness, such motions are not to be liberally granted. Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1987).

In ruling on a motion to transfer, the Court should consider “all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests of justice be better served by transfer to a different forum. See, Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). The first step in a court's analysis of a transfer motion is to determine whether venue would be proper in the transferee district. If the first prong of the inquiry is satisfied, the court then should determine whether a transfer would be in the interests of justice. Id. at 879. It is important to note that the party moving to transfer a case on grounds of

inconvenience has the burden of showing that the existing forum is inconvenient. Britamco Underwriters v. Raymond E. Wallace Productions, Inc., 56 F.Supp.2d 542, 545 (E.D. Pa. 1999) (Joyner, J.).

III. DISCUSSION

A. Could the action have been brought in the Northern District of Texas?

Any civil action wherein jurisdiction is not found solely on the diversity of citizenship may be brought in a district in which a substantial part of the events or omissions giving rise to the claim occurred. 28 U.S.C. §1391(b)(2). Since Monarch is headquartered in Dallas, and the decision to terminate Plaintiff was made in Dallas, the action could have been brought in the Northern District of Texas. Defendants do not argue that the case was improperly brought in the Eastern District of Pennsylvania.

B. Would a transfer to the Northern District of Texas be in the interests of justice and for the convenience of witnesses and parties?

The second part of the transfer analysis requires a balancing of the interests of justice and the convenience of witnesses and parties. A court considers both private and public interests when deciding such a motion. Such factors include (1) the convenience and preference of the parties, including the plaintiff's choice of forum, (2) the convenience of witnesses, (3) access to sources of proof such as books and records, (4) practical considerations that make litigation easy, expeditious or inexpensive, (5) the relative calendar congestion of the two competing districts, (6) where the events at issue took place and the interest of the respective courts in deciding local controversies (7) the enforceability of any judgment and (8) the

familiarity of the trial judge with the applicable law. See, Jumara, 55 F.3d at 879-880. These factors will be discussed in turn.

1. Convenience of Parties and Plaintiff's Choice of Forum:

The plaintiff's choice of forum is a paramount consideration that should not lightly be disturbed. See, First Union National Bank v. United States, 55 F.Supp. 2d 331, 332 (E.D. Pa. 1999) (*quoting* Sovereign Bank, F.S.B. v. Rochester Community Savings Bank, 907 F.Supp. 123, 126 (E.D. Pa. 1995) (denying motion to transfer even though plaintiff filed in a district which was not his home nor the situs of events in contention). Moreover, unless the balance of convenience of the parties is strongly in favor of defendant, the plaintiff's choice of forum should prevail. See Affymetrix, Inc. v. Synteni, Inc., 28 F.Supp.2d 192, 197 (D.Del. Nov 18, 1998), (*quoting* Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970). When considering a motion to transfer, a court may consider the "convenience of the parties as indicated by their relative physical and financial condition." Jumara, 55 F.3d at 879.

In the present action, Plaintiff has chosen the Eastern District of Pennsylvania. Even though this choice is entitled to less weight than it might otherwise be given because it neither his home forum nor the situs of relevant events, it is still the most important factor the Court considers. Although Philadelphia is not Plaintiff's home forum, it is a decidedly more convenient place for him to litigate in than would be Dallas, Texas (Baltimore is no more than a two-hour drive from Philadelphia). In viewing the financial conditions of the parties, the convenience to Plaintiff, a solo practitioner, of litigating close to home outweighs the inconvenience that traveling to Philadelphia would cause to Defendant Monarch. It also should be noted that Monarch both manages and has ownership interests in dental practices and

companies that reside within the Eastern District, thereby suggesting that such travel may be fairly routine for potential witnesses. Also, it would likely be equally inconvenient for Monarch to litigate in Baltimore as in Philadelphia. Therefore, this factor weighs in favor of denying the transfer request.

2. Convenience of Witnesses:

In assessing the propriety of a district court's decision to transfer an action, the Third Circuit has required defendants to submit affidavits, depositions or other evidence to support motions to transfer. See Plum Tree v. Stockment, 488 F.2d 754, 756 (3d Cir. 1973). Monarch contends that its two most important witnesses reside in Texas (CEO Gary Cage and the Vice President of Human Resources, Mary Preston). See Preston Aff. ¶ 3. The Defendant does not provide any additional information concerning the substance of the witnesses testimony. The Plaintiff, on the other hand, lists 5 witnesses who currently reside in the Eastern District of Pennsylvania. These witnesses would not be subject to the subpoena power of the Northern District of Texas. However, Monarch's witnesses are still employed by the company and it would have a serious interest in having them travel to Philadelphia. Plaintiff claims that his most important witness is his former direct supervisor, Mr. Frank¹, who is no longer employed by Monarch. Therefore, Plaintiff would not be able to subpoena Mr. Frank to Dallas, and he would be unlikely to appear unless compensated. Therefore, this factor weighs towards denying the transfer.

1. Mr. Frank served as Monarch's Chief Operations Officer from November 1998 until resigning in the Autumn of 1999. According to Plaintiff, he resided in the Eastern District of Pennsylvania throughout his tenure with Monarch.

3. Access to Documents:

Defendant states that the documents relevant to this case are located at Monarch's headquarters in Dallas. Preston Aff. ¶ 6. However, it is not clear how great a burden it would be to move the necessary documents to Philadelphia. The Plaintiffs do not argue that any of the relevant documents are located in this district. The Court finds on balance that while this factor favors transfer, it should not be accorded great weight.

4. Where the Events at Issue Took Place

The decision to terminate Plaintiff from his employment at Monarch was made in Dallas. Although Plaintiff worked throughout the East Coast, he often traveled to Dallas while he worked for Monarch. Therefore, this factor weighs in favor of transfer. However, this case involves an issue of federal law that will not require local state law expertise. It also does not require much physical evidence that would be more readily available in Dallas.

IV. CONCLUSION

Neither Plaintiff nor Defendant addresses any of the other considerations that a Court inquires into when deciding a motion to transfer venue. The Plaintiff has chosen Philadelphia as the forum in which to litigate. Although, this choice is entitled to less weight than it would receive if Plaintiff resided there, it is still a factor weighing against transfer. The Plaintiff has also shown that the Eastern District of Pennsylvania would be more convenient for himself and the witnesses likely to testify. On, the other hand, Defendant's only real argument is that the case should be litigated in Dallas because Monarch is headquartered there. While this

clearly shows that the Northern District of Texas is more convenient for Monarch to litigate in, the showing is not strong enough for the Court to conclude that the interests of justice require a transfer. Therefore, Monarch's motion is denied.

An appropriate Order follows.

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Plaintiff,

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MONARCH DENTAL CORPORATION

Defendant.

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CIVIL ACTION

NO. 99-4571

ORDER

AND NOW, this 15th day of December, 1999, upon consideration of Defendant's Motion to Transfer Venue (Docket No. 4), and Plaintiff's Response thereto (Docket No. 5), it is hereby **ORDERED** that Defendant's Motion is **DENIED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.